

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

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Amendment of the Commission's Rules )

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Regarding Installment Payment Financing for )

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Personal Communications Services (PCS) )

)

Licenses )

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WT Docket No. 97-82

**COMMENTS OF AT&T WIRELESS SERVICES, INC.**

Pursuant to the Commission's Further Notice of Proposed Rulemaking, AT&T Wireless Services, Inc. ("AT&T") hereby submits its comments in the above-captioned proceeding.<sup>1/</sup>

**INTRODUCTION AND SUMMARY**

The Commission's proposals regarding eligibility for the C and F block reauction generally are a reasonable accommodation of designated entities' desires to participate in the auction free from competition by larger entities, and incumbents' need for additional spectrum to provide service to existing and future customers. In particular, the Commission's tentative decision to disaggregate the 30 MHz C block licenses into three 10 MHz blocks is appropriate because smaller licenses would better suit the needs of most bidders. As the Commission recognizes, 10 MHz blocks are more affordable to small businesses and they also permit a greater number of companies to bid without fear of violating the spectrum cap.

Notwithstanding its support for such a spectrum configuration, however, AT&T continues to believe that there is no justification for retaining the spectrum cap in this auction. The record is replete with evidence demonstrating that allowing all bidders to participate regardless of size or incumbency would promote efficiency and ensure that licenses are

<sup>1/</sup> Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, Further Notice of Proposed Rulemaking, FCC 00-197, WT Docket No. 97-82 (rel. June 7, 2000) ("Further Notice").

disseminated to the parties that can put them to the best use. Moreover, there has been no demonstration that elimination of the cap would harm competition or otherwise impede small businesses or new entrants from participating in the provision of spectrum-based services.

Although AT&T understands the Commission's decision to limit bidding on some licenses solely to designated entities, it does not agree that a population cut-off of 2.5 million to determine how many C block licenses are set aside in a particular market is advisable. A more supportable solution from an administrative ease and legal standpoint would be to reserve one 10 MHz license in each market for designated entities, while opening the remaining two to all bidders, including small businesses. In light of the substantial bidding credits proposed in the Further Notice, there is no question that designated entities will have meaningful opportunities to acquire licenses in both open and closed blocks. Restricting bidding on more than one C block license in each market, by contrast, could result in a "rush" on one set of licenses and a dearth of bidders on the rest.

For these same reasons, the Commission should adopt its proposal to permit open bidding on the F block and 15 MHz licenses. There is already substantial spectrum reserved for designated entities in the relevant F block markets, and the available 15 MHz licenses are those that remained unsold after the last restricted auction. Attempting to auction them again solely to designated entities makes little sense.

Finally, AT&T encourages the Commission to adopt its proposal to allow C and F block licensees to transfer their authorizations to any entity once the licensees meet their five-year build-out benchmarks. Elimination of tighter restrictions on alienability will benefit consumers by creating incentives to launch service more quickly and enhancing the ability of designated entities to obtain financing.

**I. THE COMMISSION SHOULD DISAGGREGATE THE C BLOCK LICENSES INTO THREE 10 MHZ LICENSES AND ELIMINATE THE SPECTRUM CAP**

**A. AT&T Supports the Commission's Proposal to Split the 30 MHz C Block Licenses into 10 MHz Blocks**

The Commission's tentative decision to divide the 30 MHz C block licenses into three 10 MHz blocks would promote efficient use of the spectrum and provide the public with a fair return on the sale of the licenses far more effectively than an auction of larger blocks.<sup>2/</sup> As noted by numerous commenters in related proceedings, many existing licensees are precluded by the spectrum cap from acquiring more than 10 or 15 MHz of additional spectrum in a given market.<sup>3/</sup> In the Further Notice, the Commission recognizes that auctioning 10 MHz licenses would give such bidders "greater flexibility in tailoring their bidding to their business plans without running afoul of the spectrum cap."<sup>4/</sup> In an auction of larger blocks, by contrast, incumbents would be required to sell any spectrum they win above the permitted amounts quickly in the secondary market. Such a forced sale would provide no benefit to the government, and the Commission would have no assurance that the licenses will end up in the hands of the parties who intend to put them to their highest and best use.

Moreover, as the Commission notes, disaggregating the spectrum into 10 MHz blocks would also benefit small businesses by making licenses more affordable.<sup>5/</sup> Because many

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<sup>2/</sup> Further Notice at ¶ 16. The Commission should also include any available (unsold or otherwise held by the Commission) D and E block licenses in this auction.

<sup>3/</sup> See, e.g., Comments of AT&T Wireless Services, Inc. on Petition for Reconsideration, Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97-82, at 3-4, (Apr. 17, 2000); BellSouth Corp. Petition for Waivers of the CMRS Spectrum Cap Requirements of 47 C.F.R. § 20.6 and the Eligibility Restriction of 47 C.F.R. § 24.709 for the PCS Frequency Blocks C and F Auction to Begin on July 26, 2000, at 3-5 (Feb. 17, 2000). See also Further Notice at 25 (proposing to apply the CMRS spectrum cap to this auction).

<sup>4/</sup> Further Notice at ¶ 16.

<sup>5/</sup> Id. at ¶ 16.

companies will not need 30 MHz of spectrum to enter the market, requiring them to compete for, and acquire, a 30 MHz license would be both inefficient and costly. Businesses (small or large) that need and can afford up to 30 MHz, however, could bid on two or three licenses according to their requirements and financial capabilities.<sup>6/</sup>

In this regard, AT&T agrees with the Commission that, given the large number of licenses to be auctioned, combinatorial bidding would be very complex and impractical to implement in the near term.<sup>7/</sup> The time that would be required to develop and test a combinatorial bidding design and educate and familiarize bidders with the process would unnecessarily delay putting these licenses into service. Use of existing bidding procedures and a division of the spectrum as proposed in the Further Notice is the most expeditious way to satisfy all the statutory objectives and ensure the widest possible participation in the auction.

**B. Increased Competition in the Wireless Market Eliminates the Need for Application of the CMRS Spectrum Cap in this Auction**

The Commission concludes that the 45 MHz spectrum cap should be retained in this auction while, at the same time, it recognizes that the wireless market has changed considerably since the advent of spectrum auctions.<sup>8/</sup> The spectrum cap was adopted in 1994 to prevent the concentration of control over spectrum in too few hands. But, as Commissioner Powell correctly

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<sup>6/</sup> Most wireless providers agree that Nextel's proposal to bifurcate the 30 MHz C blocks into one 20 MHz license and one 10 MHz license would suit Nextel's business plans nicely, but would unnecessarily limit auction participation. See, e.g., Comments of AT&T Wireless Services, Inc., Petition of SBC Communications Inc. for a Waiver of the Eligibility Requirements, DA 00-145, DA 00-191, at 7-8 (Feb. 22, 2000); Comments of U S WEST Wireless, LLC, Petitions by Nextel Communications, Inc. and SBC Communications, Inc. Regarding PCS C and F Block Spectrum, DA 00-191, at 4 (Feb. 22, 2000). A 20-10 split would create intense competition for the single remaining 10 MHz license from both existing licensees facing spectrum cap issues and small businesses that do not need and cannot afford more spectrum. At the same time, bidding activity on the 20 MHz license could be very slow in many markets, artificially dampening its value.

<sup>7/</sup> Further Notice at ¶ 17.

<sup>8/</sup> See, e.g., id. at ¶ 25.

states, “many changes in the marketplace have occurred that require the immediate reexamination of this artificial barrier (like the entrepreneur’s block eligibility restrictions) to the acquisition of spectrum.”<sup>9/</sup> With competition in the provision of wireless services now a reality, the CMRS spectrum cap need not be applied to the C and F block reauction to ensure a robust wireless marketplace.<sup>10/</sup>

The demand for AT&T’s wireless services has exploded in recent years, fueled in part by its innovative “Digital One Rate” plan. The existing spectrum that AT&T is not currently using to satisfy that demand nevertheless is needed to meet projected subscriber growth and to deploy the new technologies that will soon be available. Without additional spectrum, AT&T, like other large wireless providers, will face considerable difficulty in rolling out Third Generation (“3G”) wireless applications and advanced broadband services.

While the Commission’s tentative decision to auction the 30 MHz licenses in smaller blocks would partially alleviate spectrum constraint problems, it would likely be only a short-term fix. The Commission has not revealed any plans to allocate immediately usable, substitutable spectrum in the foreseeable future and, therefore, artificially constraining existing licenses to 45 MHz could have adverse consequences long into the future. Specifically, if AT&T cannot acquire the spectrum it needs in this auction to prepare for its 3G roll-out, it is not clear when or if there will be another chance to do so.<sup>11/</sup> The Commission should rethink its decision

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<sup>9/</sup> Id., Separate Statement of Commissioner Michael K. Powell, Concurring at 1.

<sup>10/</sup> See AT&T Wireless Services, Inc. Petition for Waiver of the CMRS Spectrum Cap Requirements of 47 C.F.R. § 20.6 for the PCS Frequency Blocks C and F Auction To Begin on July 26, 2000 (Feb. 15, 2000); Reply Comments of AT&T Wireless Services, AT&T Wireless Services, Inc. Petition for Waiver of the CMRS Spectrum Cap Requirements of 47 C.F.R. § 20.6 for the PCS Frequency Blocks C and F Auction To Begin on July 26, 2000, DA 00-318 (Mar. 10, 2000).

<sup>11/</sup> Although the Commission has announced an auction of UHF spectrum now held by licensees for television channels 60-69, much of that spectrum will not be usable until 2006 (at the earliest) because of presence of incumbents in the band. See Public Notice, Auction of Licenses

to apply the CMRS spectrum cap to this auction and thereby give carriers the ability to provide the services demanded by consumers.<sup>12/</sup>

## **II. THE COMMISSION SHOULD ELIMINATE THE ELIGIBILITY RESTRICTIONS FOR ALL BUT ONE 10 MHZ C BLOCK LICENSE IN EACH MARKET**

The Commission's proposal to reserve two 10 MHz licenses for designated entities in markets with a population below 2.5 million<sup>13/</sup> would be administratively cumbersome and extremely inefficient. Instead, the Commission should eliminate entrepreneurial restrictions for two of the three 10 MHz C block licenses in each market. Setting aside one C block license per market would more accurately reflect the balance of interests that Congress intended to promote when it added Section 309(j) to the Communications Act. These interests include not only providing meaningful opportunities to small businesses, but also speeding the deployment and development of new services to the public, encouraging the efficient use of spectrum, and recovering for the public a portion of the value of spectrum.<sup>14/</sup> In addition, this approach would

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in the 747-762 and 777-792 Bands, Auction Notice and Filing Requirements for 12 Licenses in the 700 MHz Bands Auction Scheduled for May 10, 2000, Minimum Opening Bids and Other Procedural Issues, Report No. AUC-00-31-C (Auction No. 31), DA 00-292, at ¶ 1 (Feb. 18, 2000). Accordingly, even if a carrier is able to acquire one or more of the twelve regional UHF licenses, this spectrum is unlikely to resolve pressing congestion problems or help it begin deploying advanced services.

<sup>12/</sup> The CMRS spectrum cap also puts AT&T and other domestic carriers at a disadvantage to foreign carriers, which generally are not subject to such rules. The cap has the untoward effect of advancing foreign carriers by allowing them to develop broadband, advanced, or 3G services more quickly and efficiently than their counterparts in the United States. This, in turn, may permit these carriers to control technology choices and prevent others from achieving economies of scale and scope. Similarly, failure to raise or eliminate the spectrum cap could discriminate in favor of later entrants because cellular incumbents must support a large subscriber base, much of which remains analog. Although most cellular carriers are converting their systems to newer and more efficient digital technology, at this point, they must continue to devote most spectrum to serving existing mobile customers.

<sup>13/</sup> See Further Notice at ¶¶ 28-30.

<sup>14/</sup> See id. at ¶ 24. See also 47 U.S.C. § 309(j)(3)(A)-(D).

be far easier to administer than a tiered system based on population.<sup>15/</sup>

The Commission recognizes that the “demand for spectrum to satisfy congestion, new technology and competitive needs” requires it to make some licenses in this auction available to all interested parties.<sup>16/</sup> Opening only one 10 MHz C block license in all but the largest markets, however, would not sufficiently serve these needs. Rather, it would artificially restrict supply to the majority of bidders and, at the same time, create an oversupply of spectrum for a much smaller group of participants. As a result, the winning bidder on the open license would likely have to pay more than fair value for the authorization, while the closed licenses would not generate the interest or prices they deserve.

The Commission acknowledges that “bidding credits without a set aside enable small businesses to compete effectively in open auctions, even auctions of broadband PCS licenses.”<sup>17/</sup> In this auction, the Commission proposes to increase the bidding credits for small and very small businesses from 15 and 25 percent to 25 and 40 percent respectively.<sup>18/</sup> The adoption of such large bidding credits would further ensure that designated entities can compete meaningfully in the auction -- in both open and closed blocks -- and have a very good chance of acquiring the licenses they desire.

Should the Commission nonetheless decide to adopt a tiered approach for the 10 MHz C block licenses, the upper tier should include licenses in BTAs with populations of one million or greater (approximately the top 10 percent of the BTAs in the United States). The proposed 2.5

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<sup>15/</sup> The tiered approach also fails to take into consideration the needs of wireless providers to obtain licenses in BTAs that border larger markets. Most incumbent carriers have MTA authorizations, which encompass numerous BTAs. Because their systems have been designed to cover both small and large markets, these carriers are experiencing spectrum constraints not only in major metropolitan areas, but also in the smaller, nearby BTAs.

<sup>16/</sup> See Further Notice at ¶ 26.

<sup>17/</sup> Id. at ¶ 40.

million population cut off<sup>19/</sup> is too high because, even in markets with one million residents, the incredible growth of wireless service is likely to cause congestion problems for incumbents. Moreover, a lower tier that includes BTAs with up to 2.5 million residents would encompass many markets in which build-out costs would be prohibitive for small businesses. If the Commission decides to base the C block set aside on population, it should ensure that the parties eligible to bid on the majority of licenses also are those that have the wherewithal to provide service to customers quickly and efficiently.

To further promote the congressional objectives of providing rapid service to the public and encouraging spectrum efficiency, the Commission should adopt its proposal to remove eligibility restrictions on the F block and 15 MHz licenses.<sup>20/</sup> While a set aside of one 10 MHz C block authorization is appropriate, reserving the F block or 15 MHz licenses for designated entities is wholly unnecessary to ensure small business participation. As the Commission notes, because there is a 30 MHz license held by a C block entrepreneur in virtually all BTAs where there is an available F block license, there is already significant set-aside spectrum in each of these markets. In addition, the 15 MHz licenses were previously put up for sale in restricted auctions and nevertheless remained unclaimed.<sup>21/</sup> Therefore, it is now appropriate to open these licenses to all bidders.<sup>22/</sup>

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<sup>18/</sup> Id. at ¶ 41.

<sup>19/</sup> Id. at ¶ 30.

<sup>20/</sup> See id. at ¶ 31.

<sup>21/</sup> Id. at ¶ 32.

<sup>22/</sup> Similarly, AT&T supports the Commission's proposal to lift eligibility restrictions on any C and F block licenses that remain unsold after Auction 35. See id. at ¶ 33.



### **III. LICENSEES SHOULD BE ALLOWED TO ASSIGN OR TRANSFER AUTHORIZATIONS ONCE THEY MEET THEIR FIRST BUILD-OUT BENCHMARKS**

The Commission should adopt its proposal to permit a licensee to assign or transfer its authorization to any qualified entity, entrepreneur or not, upon the licensee's completion of its first construction benchmark, even if such benchmark is met in less than five years.<sup>23/</sup> As the Commission notes, this build-out benchmark for transferability would be less burdensome than a regime in which it must monitor trafficking of licenses.<sup>24/</sup> In addition, the greater freedom and autonomy over licenses brought about by this rule change would give licensees a powerful incentive to construct their facilities expeditiously. It would also aid designated entities in obtaining necessary financing because it would put them on a more equal footing with other CMRS providers. Eliminating alienability constraints earlier, based on a licensee's decision to construct networks and provide service more rapidly, therefore, would result in less waste of valuable spectrum and more choices for consumers. AT&T strongly recommends adoption of this proposal.

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<sup>23/</sup> Id. at ¶ 44.

<sup>24/</sup> Id. at ¶ 44.

## CONCLUSION

For the foregoing reasons, the Commission should: (1) reconfigure the 30 MHz C block licenses into three 10 MHz licenses; (2) set one of those 10 MHz licenses aside in each market for designated entities; (3) open the remaining C and F block licenses to all bidders; (4) eliminate the CMRS spectrum cap for this auction; and (5) permit C and F block licensees to transfer their authorizations once they achieve the first build-out benchmark.

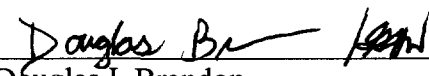
Respectfully submitted,

AT&T WIRELESS SERVICES, INC.

Howard J. Symons  
Sara F. Seidman  
Ghita Harris-Newton  
Mintz, Levin, Cohn, Ferris, Glovsky &  
Popeo, P.C.  
701 Pennsylvania Avenue, N.W.  
Suite 900  
Washington, D.C. 20004  
(202) 434-7300

Of Counsel

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\_\_\_\_\_  
Douglas I. Brandon  
Vice President - External Affairs  
1150 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
(202) 223-9222

### **CERTIFICATE OF SERVICE**

I, Angela Brunson, hereby certify that on this 22nd day of June 2000, I caused copies of the attached "Comments of AT&T Wireless Services, Inc. " to be served via hand delivery upon the following:

Magalie R. Salas  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room TW A325  
Washington, DC 20554

Thomas Sugrue  
Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 3-C252  
Washington, DC 20554

Clint Odom  
Office of Chairman William E. Kennard  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 8-B201  
Washington, DC 20554

Amy Zoslov  
Chief  
Auctions and Industry Analysis Division  
Wireless Telecommunications Bureau  
445 Twelfth Street, SW, Suite 4-A760  
Washington, D.C. 20554

Mark Schneider  
Office of Commissioner Susan Ness  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 8-B115  
Washington, DC 20554

Kathleen O'Brien Ham  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 3-C255  
Washington, DC 20554

Brian Tremont  
Office of Commissioner Harold Furchtgott-  
Roth  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 8-A302  
Washington, DC 20554

Audrey Bashkin  
Auctions and Industry Analysis Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 Twelfth Street, SW, Room 4A-664  
Washington, D.C. 20554

Peter Tenhula  
Office of Commissioner Michael K. Powell  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 8-A204  
Washington, DC 20554

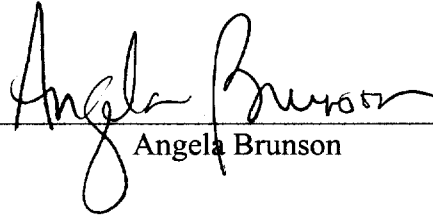
Jim Schlichting  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 3-C254  
Washington, DC 20554

Adam Krinsky  
Office of Commissioner Gloria Tristani  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 8-C302  
Washington, DC 20554

Diane Cornell  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 3-C220  
Washington, DC 20554

Office of Media Relations  
Public Reference Center  
445 Twelfth Street, SW  
Suite CY-A257  
Washington, D.C. 20554

International Transcription Service, Inc.  
1231 20<sup>th</sup> Street, N.W.  
Washington, D.C. 20036



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Angela Brunson

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